

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL  
MORTGAGE BACKED SECURITIES  
LITIGATION,

This Document Relates to: ALL CASES

Master Case No. C09-037 MJP

[Consolidated with: Case Nos.  
CV09-0134 MJP, CV09-0137 MJP, and  
CV09-01557 MJP]

**DECLARATION OF J. WESLEY  
EARNHARDT IN SUPPORT OF  
DEFENDANTS' MOTION FOR LEAVE  
TO FILE OVER-LENGTH BRIEF IN  
SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT**

**NOTE ON MOTION CALENDAR:  
March 29, 2012**

I, J. Wesley Earnhardt, hereby declare as follows under penalty of perjury pursuant to  
28 U.S.C. § 1746:

1. I am an attorney at law licensed to practice in the State of New York. I am a  
member of the firm of Cravath, Swaine & Moore LLP, counsel of record for defendants  
WaMu Asset Acceptance Corporation and WaMu Capital Corporation (collectively, the  
“WaMu Defendants”) in this action. By virtue of my representation of the WaMu Defendants  
in this matter, I have personal knowledge of the facts set forth below, or knowledge based on

*Declaration of J. Wesley Earnhardt:  
(CV09-037 MJP) - 1*

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1 information and belief, and could and would testify competently to those facts if called to do  
2 so.

3           2.       On March 26, 2012, the parties held a telephonic meet and confer regarding  
4 Defendants' request for an extension of page limits for their forthcoming motion for summary  
5 judgment. During the conference, I sought the consent of Plaintiffs' counsel, Joshua Devore  
6 of Cohen Milstein and Anne Box of Scott + Scott, to the requested extension. Mr. Devore  
7 and Ms. Box stated that Plaintiffs would oppose any extension of page limits, and stated that  
8 their basis for such opposition was that, in their view, Defendants should not seek summary  
9 judgment in this matter, making any extension of page limits unnecessary and unreasonable. I  
10 explained to Plaintiffs' counsel that Defendants nevertheless intended to move for summary  
11 judgment and, rather than having multiple Defendants file separate briefs, Defendants would  
12 agree to file a single joint brief. The intention to file a single joint brief (in lieu of filing  
13 multiple briefs) also had been communicated to Mr. Devore and Ms. Box via email prior to  
14 the meet and confer. Mr. Devore and Ms. Box did not change their position but, instead,  
15 refused to grant any extension of the page limits.

16           3.       The accompanying motion is premised in part on the following facts.  
17 Discovery in this case commenced on October 25, 2010. (Joint Discovery Plan, Dkt. 203,  
18 filed Oct. 25, 2010). In response to Plaintiffs' document requests, Defendants and non-party  
19 JPMorgan Chase Bank, N.A. produced over twenty-six million pages of documents. (Decl. of  
20 Anne Box in Support of Plaintiffs' Expedited Motion to Amend Scheduling Order, dated  
21 Dec. 8, 2011, Ex. A.)

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*Declaration of J. Wesley Earnhardt:*  
*(CV09-037 MJP) - 2*

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EXECUTED this 29th Day of March, 2012, at New York, New York.

By: s/ J. Wesley Earnhardt  
J. Wesley Earnhardt

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29<sup>th</sup> day of March, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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3 DATED this 29<sup>th</sup> day of March, 2012 at Seattle, Washington.

4 By s/Brian C. Free

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